

Message Text

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ACTION L-03

INFO OCT-01 EA-11 ADP-00 SCA-01 JUSE-00 RSR-01 RSC-01

SSO-00 /018 W

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FM AMEMBASSY MANILA

TO SECSTATE WASHDC IMMEDIATE 5453

C O N F I D E N T I A L SECTION 1 OF 2 MANILA 6026

FOR L/ M/ SCA- MALMBORG

E. O. 11652: GDS

TAGS: PFOR, RP

SUBJECT: EXTRADITION TREATY

REF: STATE 096760

1. MAJOR POINTS OF DIFFICULTY DESCUSSED TO DATE AND STILL
REQUIRING RESOLUTION ARE:

A. EXTRADITION OF NATIONALS: GOP CONTINUES TO FAVOR
OBLIGATION TO EXTRADITE NATIONALS, BUT PHIL REPS ARE WORKING
ON ADDITION TO LANGUAGE PROVIDING FOR THAT OBLIGATION OF
EXCEPTION RE EITHER HUMANITARIAN GROUNDS OR SPECIAL CIRCUM-
STANCES. U. S. REPS HAVE INDICATED THAT LATTER WOULD BE
PREFERABLE. THIS SO AS IT COULD ENCOMPASS SPURIOUS CASES AGAINST
MEMBERS OF U. S. MILITARY FORMERLY STATIONED IN PHILIPPINES.
IN VIEW STRONG FEELINGS EXPRESSED BY PHIL REPS THAT U. S.
WORDING RE NO OBLIGATION, BUT DISCRETION, TO EXTRADITE NATIONALS
IS DISCRIMINATORY AND DIFFICULT OF APPROVAL BY PRESIDENT
MARCOS, U. S. REPS ARE DISCUSSING POSSIBILITY OF ADDING TO
PARA 5 OF MAY 14 DRAFT, LANGUAGE TO INDICATE THAT DISCRETION
WOULD NORMALLY BE EXERCISED TO AUTHORIZE EXTRADITION EXCEPT
IN SPECIAL CIRCUMSTANCES. WE BELIEVE SUCH LANGUAGE WOULD
PERMIT PERSONS SOUGHT, IF PHIL REQUEST WERE EVER SUBMITTED
BY JUSTICE DEPARTMENT FOR EXTRADITION PROCEEDINGS, TO ARGUE
ABOUT FACTS SURROUNDING INCIDENT BASIC TO OFFENSES FOR
WHICH EXTRADITION BEING SOUGHT BY GOP, PERMITTING POSSIBLE
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FINDING OF NON- EXTRADITABILITY BY COURT. STATE DEPARTMENT WOULD HAVE POSSIBILITY OF REJECTING REQUEST EITHER UPON RECEIPT WITHOUT OR AFTER REFERENCE TO JUSTICE DEPARTMENT, OR THROUGH DECISION OF SECSTATE AFTER COURT FINDING OF EXTRADITABILITY.

B. NONRETROACTIVITY: BACKGROUND: U. S. REPS WERE INFORMED THAT PHIL PENAL CODE DOES NOT REPEAT NOT NOW CONTAIN PROVISION CONCERNING CONSPIRACY FOR OTHER THAN NON- EXTRADITABLE OFFENSES SUCH AS ESPIONAGE, REBELLION, SEDITION, TREASON, AND VIOLATIONS OF PHIL DANGEROUS DRUG (NARCOTICS) ACT OF 1972 (SECTION 21). U. S. REPS WERE INFORMED THAT CONSPIRACY TO COMMIT MURDER OR TO ASSASSINATE PRESIDENT IS NOT REPEAT NOT AN OFFENSE UNDER PHIL LAW. AS COUNTER TO ARTICLE 2 (A) AND (E) OF MAY 14 DRAFT PHIL REPS PROPOSED SEPARATE ARTICLE WHICH, WITH U. S. - PROPOSED CHANGES, INCLUDING AGREEMENT TO DELETION OF " CONTINUING", READS: BEGIN TEXT THIS TREATY SHALL APPLY ONLY TO OFFENSES COVERED BY ARTICLE 2 COMMITTED AFTER THE DATE THIS TREATY ENTERS INTO FORCE; HOWEVER, AN OFFENSE CONCEIVED OR COMMENCED PRIOR TO THE DATE THIS TREATY ENTERS INTO FORCE SHALL BE EXTRADITABLE PROVIDED AN OVERT ACT IN FURTHERANCE OF THAT OFFENSE HAS BEEN COMMITTED AFTER THE DATE THIS TREATY ENTERS INTO FORCE. END TEXT. THIS LANGUAGE NOW UNDER STUDY BY BOTH SIDES. HOWEVER, WE HAVE SINCE LEARNED THAT PRESIDENT MARCOS INDICATED TO AMBASSADOR RE ORIGINAL U. S. PROPOSAL FOR ARTICLE 2 THAT GOP WOULD NEED TO STUDY CLOSELY MEANING OF WORD " OVERT" BEFORE " ACT", AS UNDER PHIL LAW " OVERT ACT" MUST ACTUALLY HAVE BEEN WITNESSED BY OTHER THAN CODEFENDANT OF PERSON CHARGED. WE PROPOSE TO AGREE TO ABOVE- QUOTED LANGUAGE UNLESS DEPT HAS OBJECTION, OR PHIL REPS RAISE QUESTION RE " OVERT".

C. EXTRAORDINARY TRIBUNAL: PHIL REPS EXPRESSED GREAT SENSITIVITY AND CONCERN ABOUT LANGUAGE OF ARTICLE 6 (A) (6) OF MAY 14 DRAFT IN VIEW CONCURRENT JURISDICTION OF MILITARY AND CIVILIAN COURTS OVER MILITARY AND CIVILIAN PERSONS SINCE IMPOSITION OF MARTIAL LAW OVER MANY OF EXTRADITABLE OFFENSES, AND FACT THAT SUCH LANGUAGE IS INCLUDED IN U. S./ SWEDISH TREATY AND U. S./ FRG DRAFT TREATY ONLY BECAUSE THEIR, NOT U. S., EXTRADITION LAW SO REQUIRES. WE UNDERSTAND FURTHER FROM SOLICITOR GENERAL MENDOZA, WHO CLOSELY FOLLOWING NEGOTIATIONS ALTHOUGH NOT PARTICIPATING IN THEM, CONFIDENTIAL

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THAT PRESIDENT MARCOS IS STRONGLY OPPOSED TO ANY LANGUAGE IN TREATY GIVING APPEARANCE OF CRITICISM OF ROLE OF PHIL MILITARY COURTS UNDER MARTIAL LAW. PHILS HAVE PROPOSED

THAT THERE BE EXCHANGE OF NOTES, SEPARATE FROM TREATY, UNDER WHICH GOP WOULD INDICATE THAT DURING DURATION OF PHIL MARTIAL LAW GOP WOULD NOT REPEAT NOT SEEK EXTRADITION FROM

U. S. PURSUANT TO THIS TREATY OF ANY PERSON POSSIBLY SUBJECT TO TRIAL BY EXTRAORDINARY COURT IN PHILIPPINES WITHOUT GIVING ASSURANCE THAT PERSON SOUGHT WOULD NOT ACTUALLY BE TRIED BY EXTRAORDINARY COURT. GOP WOULD SIMPLY NOT SEEK EXTRADITION DURING MARTIAL LAW OF PERSONS TRIABLE ONLY BY EXTRAORDINARY COURTS OR PERSONS ALREADY TRIED BY EXTRAORDINARY COURT. U. S. REPLY NOTE WOULD INDICATE THAT IN ABSENCE OF ASSURANCE IN THIS REGARD SATISFACTORY TO USG, U. S. EITHER WOULD NOT ACCEPT OR WOULD TURN DOWN ANY GOP EXTRADITION REQUEST MADE WHILE MARTIAL LAW IN EFFECT. EXCHANGE OF NOTES AS WE SEE IT WOULD TAKE PLACE AT TIME TREATY IS SIGNED, AND WOULD BE REAFFIRMED BY REFERENCE IN FURTHER EXCHANGE OF NOTES AT TIME INSTRUMENTS OF RATIFICATION ARE EXCHANGED. OUR ASSESSMENT OF GOP REQUEST IS THAT GOP FULLY UNDERSTANDS U. S. INABILITY TO INITIATE EXTRADITION PROCEEDINGS ON BEHALF OF GOP FOR INDIVIDUAL WHO WOULD BE SUBJECT TO EXTRAORDINARY COURT ACTION, AND THROUGH MEDIUM OF EXCHANGE OF NOTES IS WILLING TO GIVE ASSURANCES THAT EXTRADITION WILL BE SOUGHT ONLY FOR INDIVIDUALS TO BE TRIED UNDER NORMAL, NONEXTRAORDINARY JUDICIAL TRIBUNALS. GOP ESSENTIALLY DESIRES AVOID IMPLICIT CRITICISM OF MARTIAL LAW BY OPEN REFERENCE IN TREATY TEXT OF EXTRAORDINARY COURTS AS BEING UNSUITABLE. THEY ARE WILLING TO ACCEPT SUBSTANCE OF ARTICLE 6 (A) (6), HOWEVER, IN NOTE EXCHANGE WHICH WE HAVE INDICATED TO THEM WOULD NECESSARILY HAVE TO BE PRESENTED TO REASSURE U. S. SENATE IN OPEN HEARINGS ON THIS TREATY.

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ACTION L-03

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TO SECSTATE WASHDC IMMEDIATE 5454

C O N F I D E N T I A L SECTION 2 OF 2 MANILA 6026

2. REQUEST BY OPENING OF BUSINESS MAY 25 DEPARTMENT'S VIEWS ON ABOVE DEVELOPMENTS, PARTICULARLY PROPOSAL FOR EXCHANGE OF NOTES SEPARATE FROM TREATY THAT COULD, PERHAPS, BE PUBLISHED IN U. S. WITHIN TIAS.

3. EXTRADITION DOCUMENTATION: RE ARTICLE 12 (D), LINE 5
OF MAY 14 DRAFT, PHIL REPS HAVE REQUESTED INSERTION AFTER
" REQUESTING PARTY" OF " OR A RESPONSIBLE OFFICER AUTHORIZED
BY LAW", IN VIEW OF FACT THAT CERTAIN MILITARY OFFICERS
ARE NOW AUTHORIZED TO ISSUE ARREST WARRANTS. U. S. REPS
HAVE STATED WE HAVE REAL PROBLEM WITH THIS SUGGESTION,
AND THAT SUCH ARREST WARRANT COULD GRAVELY PREJUTICE PHIL
EXTRADITION REQUEST, AND HAVE READ TO PHIL REPS COMMENTS
ON PAGE 6 OF U. S. 5/4 COMMENTS ON ARTICLE 13 (3) OF U. S./
NETHERLANDS DRAFT TREATY. HERE, AGAIN, PHIL SENSITIVITIES
RE IMPLIED CRITICISM OF MARTIAL LAW EXPLAIN THEIR VIEWS.
U. S. REPS WILL CONTINUE STRONGLY TO PRESS FOR OMISSION OF
THIS PROVISION. HOWEVER, REQUEST DEPARTMENT COMMENTS ON
POSSIBILITY ITS INCLUSION IF PHIL REPS CONTINUE TO INSIST.

4. TRANSPORTATION EXPENSES: RE ARTICLE 18 (C) OF MAY 14
DRAFT, PHIL REPS QUESTIONED WHO WOULD COVER TRANSPORTATION
EXPENSES FROM PLACE WHERE EXTRADITION PROCEEDINGS WERE
HELD TO LOGICAL POINT IN U. S. OF INTERNATIONAL DEPARTURE
TO PHILIPPINES, SUGGETING ADDITION IN LINE 2 AFTER
" PERSONS SOUGHT" OF " FROM THE POINT OF INTERNATIONAL
DEPARTURE". REQUEST VIEWS OF DEPARTMENT AND JUSTICE
WHETHER U. S. COULD ASSUME TRANSPORTATION EXPENSES WITHIN
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U. S. TO MUTUALLY AGREED INTERNATIONAL POINT OF DEPARTURE.
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*** Current Classification *** CONFIDENTIAL

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